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Atty. Docket No.: P68924US0

**R E M A R K S**

Favorable reconsideration is respectfully requested in view of the following comments. By this Amendment claims 1, 4-6, 8, 10-11, and 14-17 have been amended, and claim 9 has been canceled without prejudice or disclaimer. Claims 1-8 and 10-19 are pending in the application.

Filed separately herewith is Credit Card Payment Form PTO-2038 in the amount of \$44.00 for one additional independent claim. If the amount is in error, the Patent and Trademark Office is authorized to debit or credit, as appropriate, Deposit Account No. 06-1358.

In the Action, attention is directed to the requirements of the Abstract. Upon review, it appears that the Abstract as filed complies with the requirements as outlined.

Regarding the Information Disclosure Statement (IDS), a separate IDS will be filed to include the prior art made of record in U.S. Patent No. 6,287,687. The prior art and submittal form of the IDS will also include all prior art considered pertinent at this time. It is noted that the prior art relied upon in the Action included the two prior patents discussed in the "Description of the Prior Art" section of the specification.

The typographical error with respect to the word "then" in claim 1 has been corrected and claim 11 amended to provide antecedent basis for "said disks." Also, claim 16 which has been

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objected to has also been amended in an manner which is believed to clearly define the structure and operation. It is noted that line 20 discussed with respect to claim 16 is line 20 on page 26 of the specification and claims and is actually line 23 of claim 16 which starts on page 25.

With the foregoing amendments and changes and the separate IDS, Applicants submit that all objections have been overcome.

The allowance of claim 5 is noted with appreciation. This claim has been rewritten in independent form. However, several limitations in parent claims 1 and 4 that were not considered patentable in rejected claims 1 and 4 being omitted. Specifically, the structure of the disks and picking bars to reduce weight has been deleted. Also, the paddle and finger details of the chain conveyor in claim 5 have been removed. Even so, claim 5 retains the patentable orientation of the conveyor surface and conveyor chain and their relation to the picking units.

Claims 1, 2, 4, 8, 9-19 have been rejected as anticipated by Ulrich under 35 U.S.C. 102(b). It is also noted that in the rejection, the Ulrich patent is discussed and reference numerals from the Ulrich patent have been associated with the limitations in the claims. It is further noted that the terminology in the claims relating to the picking fingers in the Ulrich patent is considered as disclosing tip ends of opposed picking fingers (30B, 32B, 34B and 36B) being spaced from each other and further, the Action states

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that the aforementioned picking fingers and rotatable support members are "inclined upwardly and toward said pepper plants to form an inclined path of movement for peppers removed from the pepper plants" and it is further stated in the Action that "picking bars (30A, 32A, 34A, A) are inclined upwardly to convey peppers picked from pepper plants transversely of said picking bars."

However, the disclosure of the Urich patent includes a relationship as clearly illustrated in Figure 1 in which the fingers including the tip ends thereof are overlapped so that the tip ends are in side-by-side relation rather than being in opposed spaced relation. In the specification of the Urich patent, column 4, lines 46-50, the structure of the picking bars and fingers is described so that as the picking bars move, "the fingers 30B and 32B move towards each other (and preferably interleave or nearly interleave) and then lift so as to reach under the product 6 and lift it relative to the plant." Likewise in claim 1 of the Urich patent, column 6, lines 51-53, the claim defines the structure of "said first plucking means interleave with the fingers mounted on at least one of said bars of said second plucking means." Based upon the clear disclosure in the Urich patent, the structure in Urich does not include --"picking fingers--being disposed in opposed relation to enter a pepper plant from opposite sides at a low elevation, the tip ends of opposed picking fingers being spaced from each other when moving upwardly in relation to pepper plants." Clearly, the picking fingers in Urich

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are not disposed in opposed relation since they overlap or interleave.

Even so, claim 1 and claims dependent therefrom have been amended to even further distinguish from Urich by setting forth that the opposed picking fingers terminate in tip ends that are laterally spaced from each other and generally in laterally aligned relation. This terminology clearly distinguishes the claim structure from the interleaved or overlapping picking fingers in Urich in which the tip ends of the picking fingers are not laterally spaced from each other and are not generally in lateral alignment since the tip ends of the picking fingers in Urich are positioned in interleaving or overlapping relation to the picking fingers on an opposed picking bar as clearly illustrated in Figure 1 and Figure 3 of the Urich patent. For a comparison of the relationship, Figure 7 of the application clearly indicates that relationship of the tip ends of the fingers on adjacent picking bars. A comparison of Figure 7 of the application with Figure 3 of the Urich patent clearly illustrates the distinctive difference between the relationship of the picking fingers and the tip ends thereof in the application compared with the structure of the picking fingers and relationship of the tip ends thereof in the Urich patent.

Claim 4 in the application specifically sets forth that the picking bars, picking fingers and rotatable support members are inclined upwardly toward the pepper plants to form an inclined path

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of movement for peppers removed from the pepper plants. The Urich patent does not include any such inclination to form a path for movement of the peppers removed from the plant. The picking bars in Urich include a lower forward end and an elevated lower end to provide the picking bars of Urich with a longitudinal inclination. However, the picking bars, picking fingers and support members in Urich are not inclined upwardly toward the pepper plants to form an inclined path of movement for peppers removed from the pepper plants. In column 5, lines 7-10, the Urich patent describes a structural Figure 4 as "each finger 30B and 32B remains horizontal as the mounting disks rotate." Here again, compare the structure of Figure 8 of the application to show the upward inclination toward the plant with the relationship illustrated in Figure 4 of the Urich patent in which "each finger 30B and 32B remains horizontal as the mounting disks rotate."

Further, the Urich patent includes brushes 30C, 32C which line the same plane as the fingers 30B or 32B and are secured to the bars 30A or 32A. The manner in which the peppers 6 are moved from the fingers 30B and 32B as illustrated in Figures 3 and 4 onto the conveyor 31 or 33 is not clear since the function of the brushes 30C and 32C as the supporting disk 30D and 32D rotate is not clearly disclosed. For example, referring to Figure 4 of the Urich patent, the pepper pod 6 on finger 30B adjacent the plant is moved in an orbit as defined by the rotating disk 30D but it does not appear

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possible that the product 6 could be deposited on the conveyor 31 in view of the positions of the fingers always being horizontal and always extending toward the plant. Inasmuch as the fingers 30B on picking bar 38 always remains in horizontal position and always extends toward the pepper plant there obviously is no incline path of movement defined by picking fingers, picking bars and rotatable support members inclined upwardly toward the pepper plants to form an inclined path of movement for the peppers removed from the plants.

Here again, claim 4 and other claims in the application have been amended to more clearly set forth a structural relationship clearly not disclosed in Urich and not anticipated or suggested in Urich. For example, claim 4 now sets forth that the picking fingers, picking bars and support members include upper surfaces that are inclined upwardly toward the pepper plants to form a laterally inclined supporting path of movement for peppers removed from the pepper plants. No such structure is disclosed or suggested in the Urich patent. Claims 10-19 also include specific structure not found in Urich both as to the relationship of the tip ends of the picking fingers being laterally spaced and opposed and generally in alignment and the specific structure of the picking bars, rotating support members and picking fingers being inclined upwardly toward the plant.

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As a further comparison of the structure being claimed and the structure disclosed in Urich, the relationship of the picking fingers as illustrated in Figure 3 of the Urich patent in which the picking fingers have a substantial portion of their length interlapped or interleaved, the tip ends of the picking fingers as they move toward each other must necessarily engage the stalk or stem of the plant so that the plant is received in the space between the ends of the picking fingers that are joined to the picking bars. Compare this structure with that illustrated in Figures 5, 7 and 8 of the application in which the tip ends of the picking fingers are not overlapping or interleaved and thus they do not engage and move the plant laterally to a position between the inner ends of the picking fingers adjacent the picking bars which clearly occurs in the Urich patent.

Accordingly, Applicants submit that the Urich patent does not anticipate the structure defined in the claims in view of the specific structure being claimed and in view of the specific method being claimed in claim 15 since there is no structure in Urich to transfer the picked peppers from the plants and transfer them laterally and downwardly onto a longitudinal conveyor. The constant horizontal picking fingers 30B and 32B in Urich do not incline in a manner to pick peppers from the plants and transfer them laterally and downwardly onto a longitudinal conveying means.

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The Urich patent fails to disclose any structure similar to or equivalent to the inclined arrangement of the picking fingers, picking bars and support members as clearly illustrated in Figure 8 in which the product 56 is moved transversely or laterally onto the conveyor structure 62-64 by moving laterally down the incline support path of movement defined by the upwardly and inwardly inclined picking fingers, and picking bars. This structure and the relationship of the components forming the inclined path of movement is also illustrated in Figure 4 as well as in Figure 8. Since no such structure or function exists in Urich, Applicants submit the claims, as amended in this application, distinguish patentably from the Urich patent. Accordingly, reconsideration and allowance of all of the claims now in the application is requested.

Having overcome all outstanding grounds of rejection, favorable action on the merits and allowance of Applicants' claims are in order and are respectfully solicited.

Respectfully submitted,

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